



Terry Tamminen
Agency Secretary
Cal/EPA



Department of Toxic Substances Control

1001 "I" Street, 25th Floor
P.O. Box 806
Sacramento, California 95812-0806



Arnold Schwarzenegger
Governor

July 26, 2004

Mr. John R. Carter, III
Project Manager
Science Applications International Corporation
11251 Roger Bacon Drive
Reston, VA 20190

MANAGEMENT OF FORFEITED MATERIALS AT AIRPORTS

Dear Mr. Carter:

Thank you for your recent letter regarding materials that are voluntarily forfeited by prospective passengers at airport security checkpoints. In your letter, you requested the Department of Toxic Substances Control's (DTSC) concurrence that these hazardous wastes could be managed as household hazardous wastes. You also expressed your belief that these hazardous wastes would "be excluded/exempt from California hazardous waste requirements" when managed as household hazardous wastes. DTSC does not concur with your interpretation of the pertinent hazardous waste regulations.

For the purpose of simplifying this response to your letter, DTSC has presumed the forfeited materials, described in your letter as "lighters, lighter fluid, matches, aerosols, fireworks, hunting ammunition, camping flares, mace/pepper spray, small batteries, and cleaning chemicals, exhibit at least one characteristic of a hazardous waste. This presumption seems appropriate because, presumably, Science Applications International Corporation (SAIC) would not have otherwise questioned the regulatory status of the materials.

Background

Based upon SAIC's letter, DTSC understands:

- The Transportation Security Administration (TSA) conducts business (airport security screening operations) at 30 airports located throughout California.
- At those locations, TSA employees willingly accept (from passengers) and collect forfeited items (forfeited materials) that may not be taken aboard the aircraft.

- The forfeited materials are sorted by type, any incompatible items are segregated, and the forfeited materials are accumulated in containers prior to transport offsite for disposal.

Status of the Material under Federal Law

By being accumulated prior to disposal, the forfeited materials would be identified as solid wastes pursuant to Title 40 of the Code of Federal Regulations (40 CFR), part 261.2(b)(3). Therefore, based upon the presumption that they exhibit at least one characteristic of a hazardous waste, as defined in 40 CFR, part 261.21 through 261.24, the forfeited materials would be hazardous wastes pursuant to federal regulations [40 CFR 261.3(a)(2)(i)]. The forfeited materials would not qualify for the federal household hazardous waste exclusion, 40 CFR, part 261.4(b)(1), because they are not generated at locations that serve primarily as temporary or primary residences [see Federal Register discussion, Volume 49, No.220, page 44978, dated November 13, 1984 – copy enclosed]. However, under the federal regulatory system, the forfeited materials from any one TSA business location would qualify for the conditional small quantity generator exemption (CESQG), 40 CFR, part 261.5(b), if that TSA business location generates less than or equal to 100 kilograms of hazardous waste in any calendar month. If the material qualifies for the CESQG exemption, TSA would not be subject to the Standards Applicable to Generators of Hazardous Wastes, 40 CFR, part 262, under the federal regulatory system. However, as explained in the next section of this letter, California has not adopted the federal CESQG exemption.

Status of the Material under State Law

The forfeited materials are identified as wastes pursuant to Division 4.5 of Title 22 of the California Code of Regulations (22 Cal. Code Regs.), section 66261.2(c)(3). If the forfeited materials exhibit any federal characteristic of a hazardous waste, they would also be RCRA hazardous wastes [22 Cal. Code Regs. 66261.3(a)(2)(A) & 22 Cal. Code Regs. 66261.100(a)(1)]. If the forfeited materials do not exhibit any federal characteristic of a hazardous waste, but do exhibit any State characteristic of a hazardous waste, as defined in 22 Cal. Code Regs. Chapter 11, Article 3, they are non-RCRA hazardous wastes [22 Cal. Code Regs. 66261.3(a)(2)(A) & 22 Cal. Code Regs. 66261.101(a)(2)]. As you may know, California's hazardous waste regulations are broader in scope and more stringent than their federal counterparts. California's hazardous waste regulations do not incorporate either a household hazardous waste exclusion or a CESQG exemption. Therefore, each of TSA's business locations in California would be generators of hazardous waste and would be subject to the 22 Cal. Code Regs, Chapter 12, Standards Applicable to Generators of Hazardous Wastes.

In lieu of adopting the CESQG exemption and household hazardous wastes exclusion and allowing disposal of hazardous wastes to municipal solid waste landfills, pursuant to

California Health and Safety Code (Health & Saf. Code), Division 6.5, Chapter 20, section 25218 et seq, the State of California has established a program to ensure the proper disposal of these hazardous wastes in the State. Pursuant to Health & Saf. Code section 25218.4, each TSA location in California that qualifies as a CESQG could self-transport the forfeited materials to an authorized household hazardous waste program. If TSA elects to self-transport its hazardous wastes to an authorized Household Hazardous Waste Collection Facility, the quantity limits specified in Health & Saf. Code section 25218.5(b) would be applicable. Typically, TSA could transport no more than 50 pounds of solid hazardous waste at any one time. Please note, however, that some of the forfeited materials, namely the batteries and aerosol cans, would qualify as universal wastes in California. Therefore, if segregated from the other hazardous wastes and managed pursuant to 22 Cal. Code Regs., Chapter 23, Standards for Universal Waste Management, these forfeited materials would not contribute towards the 50 pound limit (nor would they be subject to the 180-day hazardous waste accumulation time limit). Please be advised that the local Household Hazardous Waste Collection Programs typically charge CESQGs on a fee-for-service basis.

Conclusion

Hazardous forfeited materials collected at airport security checkpoints do not meet the definition of a household hazardous waste. If they exhibit any characteristic of a hazardous waste, the forfeited materials would be regulated hazardous wastes. TSA's business locations may qualify as CESQGs; however California has not adopted the federal CESQG exemption. Therefore, the forfeited materials may not be disposed to the trash or in municipal solid waste landfills in California. All hazardous wastes in California, including household hazardous wastes and CESQG hazardous wastes, must be properly managed in accordance with California's hazardous waste requirements (EPA ID#, hazardous waste manifest, registered hazardous waste transporter, etc.). Each TSA location which qualifies as a CESQG may utilize the local authorized Household Hazardous Waste Collection Program for disposal of the hazardous wastes it generates. Each TSA location that generates more than 100 kilograms of hazardous waste in any calendar month is subject to the applicable Standards for Generators of Hazardous Wastes (22 Cal. Code Regs. 66262).

Mr. John R. Carter, III
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If you have questions about this letter, please contact Mr. William Beckman of my staff at (916) 324-8293.

Sincerely,



Karl Palmer, Chief
Regulatory Program Development Branch
Hazardous Waste Management Program

cc: Ms. Barbara Simcoe
Association of State and Territorial Solid Waste Management Officials
444 North Capitol St., NW Suite 315
Washington, DC

Mr. Rich Vaille, Chief
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cc: Mr. William Beckman
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Department of Ecology

Solid Waste & Financial Assistance Program

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

February 28, 1995

Mr. John McNally
Coll, Davidson, Carter,
Smith, Salter and Barkett
3200 Miami Center
201 South Biscayne Boulevard
Miami, FL 33131-2312

Dear Mr. McNally:

Thank you for your letter of February 13, 1995 requesting a determination of whether RCRA hazardous waste regulatory requirements apply to the handling, shipment and disposal of household appliance components removed from residences during routine maintenance and repair services.

Under Federal law, wastes from households are exempt from regulation (40 CFR 261.4(b)(1)). Household waste, to be excluded pursuant to 40 CFR Section 261.4(b)(1) must fulfill two criteria: first, household waste has to be generated by individuals on the premises of a household and, second, "the waste stream must be composed primarily of materials found in the waste generated by consumers in their homes." EPA does not distinguish between waste generated at a household by a homeowner and waste generated at a household by a person other than the homeowner (e.g., contractor) provided that the waste is generated as part of daily living (e.g., routine residential maintenance). Under EPA's current reading, solid waste generated by a homeowner, resident, or a contractor at a home as part of routine residential maintenance (as opposed to building construction, renovation, and demolition) would be part of the household waste stream, and thus would be exempt under the RCRA household waste exemption.

From the description provided in your letter, it appears that the thermostat components of residential ovens being handled under your program meet the requirements for exemption as a household waste. Individual states, however, may choose to have their own laws and policies on "household waste". Section 3009 of RCRA allows states to impose standards more stringent than, or in addition to, those in the Federal program. Therefore, you should contact the states in which the program will be operating for further assistance in determining the appropriate waste management and disposal requirements in each of these states.

You may also be interested to know that EPA has developed a new streamlined regulatory system for used batteries and other waste streams generated by non-households, which we call "universal wastes." One of the goals of this rule is to separate these universal wastes from the municipal waste stream. I have enclosed a copy of the proposal. The Agency expects the final rule to be promulgated later this spring.

Thank you for your interest in proper waste management practices.

Sincerely,

Michael Petruska, Chief
Regulatory Development
Branch

Attachment

COLL DAVIDSON CARTER SMITH SALTER & BARKETT
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

February 13, 1995

VIA FACSIMILE (202-260-0225)

Michael Petruska
Branch Chief
Regulatory Development Branch
Characterization and Assessment Division
U.S. Environmental Protection Agency
401 M Street, N.W.
Washington, D.C. 20460

Re: Regulatory Evaluation

Dear Mr. Petruska:

The following information is provided to you for purposes of obtaining an interpretation from EPA to determine if the Resource Conservation & Recovery Act (RCRA) hazardous waste regulatory requirements apply to the handling, shipment and disposal of household appliance components removed from residences during routine maintenance and repair services. I have been in contact with representatives of several EPA region offices to address this subject as the activity involves removal of appliance components from households in numerous states throughout the country. This request is submitted to you for purposes of confirming my telephone conversations with Marilyn Goode in your office to achieve uniformity and consistency in the application of the EPA regulatory requirements and to ensure compliance in the handling of these items.

The activities involve removal of a thermostat component from ovens located in residences throughout the country. The thermostat component consists of a copper tubing and contains approximately one ounce of sodium potassium alloy liquid sealed within the tubing. The thermostat is removed by the manufacturer's

service representatives and placed in a package in a container in the service vehicle. The component is picked up with other appliance parts by a transportation company and taken to a warehouse facility for further shipping and ultimate disposal. A third company picks up the components and transports them to a facility where the component is opened and the liquid is removed from the thermostat. Based on the nature of the sodium potassium alloy liquid, the material exhibits a reactive characteristic upon removal from the component. Following this reaction, the liquid is disposed of at the facility into a Publicly-Owned Treatment Works (POTW).

During removal of the thermostat and during the entire course of handling and shipping, the component remains intact and is handled in accordance with applicable Department of Transportation (DOT) transportation and labeling requirements similar to the shipment of new thermostat components. Based on the number of states involved and to ensure compliance with applicable regulatory requirements, the entities involved are interested in clarifying and confirming the regulatory requirements related to the handling of this component (and in particular determining if the component is subject to regulation under RCRA Subtitle C). Based on my telephone conversations with Ms. Goode and her discussions with other EPA representatives, I have been informed that this component would be considered within the RCRA household waste exemption and not subject to the RCRA hazardous waste regulations. As I am sure you can appreciate, clarification and confirmation of the applicable regulatory requirements concerning this component is of concern to the companies to ensure the proper and responsible handling of these components in a manner consistent with EPA regulations.

Considering the scope of this activity, the companies are interested in obtaining a response from EPA at the earliest date possible. Your cooperation and attention in this matter is very much appreciated. Please contact me following your review of this information so we can discuss these activities and the evaluation of the regulatory requirements.

Sincerely,

John J. McNally

JJM:mag

Please contact Dave Nightingale, if you have questions or comments on this page.



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Graphic by Judy Freeze



Science Applications International Corporation
An Employee-Owned Company

May 14, 2004

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Mr. Karl Palmer
Chief
DTSC Waste Identification and Recycling Section
P.O. Box 806
Sacramento, CA 95812-0806

Dear Mr. Palmer:

The Transportation Security Administration (TSA) believes, and is requesting your concurrence, that hazardous materials voluntarily abandoned at airport checkpoints may be managed as household hazardous waste (HHW) and thus be excluded/exempt from California hazardous waste requirements. TSA operates at more than 460 airports across the country, 30 of which are located in California. TSA conducts airport security screening of carry-on baggage and passengers intending to board flights departing the airport. Items that may not be taken on board passenger airplanes from unchecked baggage due to security reasons and Department of Transportation (DOT) restrictions are voluntarily abandoned by passengers at TSA monitored airport security checkpoints. The voluntarily abandoned property (VAP) collected from passengers at checkpoints may include hazardous materials.

At most airports, TSA collects less than 220 pounds (100 kg) of confiscated hazardous materials in a calendar month. The majority of items include lighters and lighter fluid, matches, aerosols, fireworks, hunting ammunition, camping flares, mace/pepper spray, small batteries (e.g., alkaline or lithium), and cleaning chemicals. A program is in place such that these materials are sorted by type/compatibility and placed into separate containers. Most hazardous materials VAP is not able to be reused/recycled once confiscated, leaving disposal as the primary method of discard.

TSA currently is contracting for the licensed disposal of VAP and requires that tracking documentation be kept by all airports, including documentation for excluded/exempt hazardous waste transport. Science Applications International Corporation (SAIC) is contractually supporting TSA's VAP disposal program and looks forward to receiving your clarifying response as to whether these items may be handled as California HHW, and appreciates being informed about any applicable state-specific onsite management and HHW disposal requirements. Please do not hesitate to contact me at (703) 318- 4622 or Ms. Elizabeth Howard at (703) 708-7476, if you have any additional questions on this matter, or the TSA Contracting Officers Representative, Ms. Cynthia Bridges at (571) 227-1064.

Sincerely,
SCIENCE APPLICATIONS INTERNATIONAL CORPORATION



John R. Carter, III
Project Manager